

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**TOMMY L. WAUGH, #47088-074,**

**Plaintiff,**

**vs.**

**STEVEN D. WEINHOEFT, *et al.*,**

**Defendants.**

**Case No. 22-cv-3016-SPM**

**MEMORANDUM AND ORDER**

**McGLYNN, District Judge:**

This matter is before the Court on the Motion to Voluntarily Dismiss filed by Plaintiff Tommy Waugh. (Doc. 8). Plaintiff requests to voluntarily dismiss his complaint because he “has too much going on” and does not have access to cases in order to prepare his defense to the pending Motion to Dismiss for Failure to State a Claim filed by the Federal Defendants.<sup>1</sup> (Doc. 8, p. 1). Defendants filed their Motion to Dismiss (Doc. 3) contemporaneously with their Notice of Removal of this case from the Circuit Court of Williamson County, Illinois, Case No. 21-L-53. (Doc. 1).

Plaintiff is an inmate in the custody of the Federal Bureau of Prisons (“BOP”), currently incarcerated at the United States Penitentiary in Terre Haute, Indiana. He filed this case in the state court on April 30, 2021 while he was confined at the United States Penitentiary in Marion, Illinois (“Marion”).<sup>2</sup> (Doc. 1-1, pp. 3-23).

Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, a plaintiff has the right to voluntarily dismiss his/her complaint by filing a notice of dismissal before the opposing

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<sup>1</sup> Defendant Bonnie Vick did not join in the Motion to Dismiss. (Doc. 3, p. 1).

<sup>2</sup> This case was previously removed to this Court by Defendant Sproul; the undersigned Judge remanded it to the state court on November 23, 2022. *Waugh v. Weinhoeft, et al.*, Case No. 21-881-SPM, Doc. 16.

party serves an answer or a motion for summary judgment. This is true even where the case was removed from state to federal court. *See Kuznar v. Kuznar*, 775 F.3d 892, 896 (7th Cir. 2015); *Trevino v. U-Haul Co. of Illinois, Inc.*, 2008 WL 4951321 at \*5, No. 08-cv-2255 (N.D. Ill. Nov. 18, 2008); *Futch v. AIG, Inc.*, 2007 WL 1752200 at \*2-3, No. 07-cv-402 (S.D. Ill. June 15, 2007). In the instant case, no Defendant has yet answered or filed a motion for summary judgment. Accordingly, the Court will grant Plaintiff's motion.

**IT IS ORDERED** that Plaintiff's Motion to Voluntarily Dismiss (Doc. 8) is **GRANTED**. All other pending motions are **DENIED AS MOOT**. This case is **DISMISSED WITHOUT PREJUDICE**.

The Clerk of Court is **DIRECTED** to close this case and enter judgment accordingly. The Clerk is **FURTHER DIRECTED** to mail a certified copy of this Order for informational purposes to the Clerk of the Circuit Court of the First Judicial Circuit, Williamson County, Illinois (Case No. 2021-L-53).

**IT IS SO ORDERED.**

**DATED: January 24, 2023**

*s/ Stephen P. McGlynn*  
**STEPHEN P. McGLYNN**  
**United States District Judge**